

APPEAL NO. 030981
FILED JUNE 12, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 21, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable injury on _____; that the claimant did not sustain a compensable repetitive trauma injury; that the claimant did not have disability; and that the respondent (carrier) is relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001. The claimant appeals essentially on sufficiency of the evidence grounds and includes new evidence for consideration. The appeal file does not contain a response from the carrier.

DECISION

Affirmed.

The claimant attached a letter to her appeal, which was from a coworker alleging that she was injured performing the same type of work as the claimant. This letter is new evidence and was not offered for consideration at the CCH. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence offered is not so material that it would probably produce a different result, nor is it shown that the documents could not have been obtained prior to the hearing below. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury either as a result of a specific incident on _____, or as a result of performing repetitively traumatic activities at work. That issue presented a question of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer resolves the conflicts and inconsistencies in the evidence, and determines what facts have been established from the evidence. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ; St. Paul Fire & Marine Ins. Co. v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). The hearing officer noted that the claimant's testimony was not credible and that she failed to prove she sustained a single event injury on _____, and failed to show that her work subjected her to or included repetitious and physically traumatic activities. The hearing

officer's determinations that the claimant was not injured in the course and scope of employment on _____, and that she did not sustain damage or harm to the physical structure of her body occurring as a result of repetitious, physically traumatic activities in the course and scope of her employment are not so contrary to the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no basis exists for us to reverse the hearing officer's injury determination on appeal. With no compensable injury found, there is no loss upon which to find disability. By definition disability depends upon a compensable injury. See Section 401.011(16).

Conflicting evidence was presented on the issues of whether the claimant timely reported her injury under Section 409.001(a). The hearing officer resolved the conflicts in the evidence by determining that the claimant failed, without good cause, to timely report her injury to her employer. There is sufficient evidence to support the hearing officer's findings on the timely notice issue.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

LJ
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Margaret L. Turner
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge